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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,925	12/12/2003	Axel L. Bernhard	27795-00032USPX	2233
<div>7590 07/27/2007 JENKENS &amp; GILCHRIST A PROFESSIONAL CORPORATION Stanley R. Moore 1445 Ross Avenue, Suite3200 Dallas, TX 75202</div>			<div>EXAMINER EVANISKO, GEORGE ROBERT</div>	
			<div>ART UNIT 3762</div>	<div>PAPER NUMBER</div>
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/734,925

Applicant(s)

BERNHARD ET AL.

Examiner

George R. Evanisko

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-14,16-19,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 4-14,16-19 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Claims 4-14,16-19 and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/21/07.

### *Claim Objections*

Claims 1, 3, and 21 objected to because of the following informalities listed below. Appropriate correction is required.

In claim 1, “to an electrical current control circuit” is inferentially included and it should either be positively recited by first listing the element before it is used in a connection or functionally recited by using functional language such as “for connecting to an electrical control circuit”. In addition, in the “second switching circuit” paragraph, it is suggested to state that the device is for connecting to one or more of the “other” connection probes since the first switching device is connected to one or more of the probes. In the last paragraph, line 1, “an electrical power supply” should be “the at least one electrical power supply” to relate it to the previously recited power supply.

In claim 3, “a multiplexing control device” is inferentially included. In addition, is this the same as the switching control devices since the switching control devices and multiplexing control device seem to perform the same function of controlling the switches/multiplexors?

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1, 3, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, “probes electrically connected to a subject” is vague since it sounds as if there is a positive connection to the body. Apparatus claims can not claim connection to the body and it is suggested to use “adapted to be electrically connected...”.

In claim 21, the claim is vague since it is unclear what is meant by “comprise a single unit”. Does this mean that the first and second switching device is just one switching device or that they are combined into a single unit still having the two switching devices? Having both switching devices be one switching device would conflict with claim 1 since claim 1 calls for two separate devices.

### ***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bartelt et al (5063929). Bartelt shows two switching devices as 20 and 21, being controlled by elements 47 (fig 9a) for providing biphasic pulses (e.g. figure 3) to the probes (e.g. 32, 33, 35, 36) that act as a return, active, OR disconnected probe (NOTE, the use of OR means that the probe only has to operate as one of three and not all of the three). In addition, Bartelt discloses a power supply, 15, connected to electrical current control circuit (e.g. 16 or figure 9a, elements 49 and 50, or figure

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10, 115, 116, etc) since these elements control the current to provide a DC output (e.g. col. 3, line 17) or constant current biphasic pulses

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rise (4390023). Rise shows two switching/multiplexing devices as 110 and 115, with switching control devices or multiplexing control device, e.g. 107 and 108 or 105 and 100, for providing biphasic pulses (e.g. col. 4, line 63) to the probes (e.g. fig 2) that act as a return, active, OR disconnected probe (NOTE, the use of OR means that the probe only has to operate as one of three and not all of the three). In addition, Rise discloses a power supply connected to electrical current control circuit as elements 125 and 120, respectively, or discloses the current control circuit as element 125 with the device

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inherently having at least one electrical power supply since the device must contain a power supply to function. Finally, the device operates as a single unit to supply the stimulation and therefore the switching devices are a single unit.

In the alternative, Rise discloses the claimed invention except for the power supply and the switching devices being a single unit. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include in the electrical device as taught by Rise, a power supply and the switching devices as a single unit since it was known in the art that electrical devices contain a power supply to provide power for the device to operate and since it was known to provide two switching devices into a single unit to reduce space and power requirements and since it has been held making integral a device that was previous separate is merely a matter of obvious engineering choice (In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)).

Claim 21 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bartelt et al (5063929). Bartelt's device operates as a single unit to supply the stimulation and therefore the switching devices are a single unit.

In the alternative, Bartelt discloses the claimed invention except for the switching devices being a single unit. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include in the electrical device as taught by Bartelt, the switching devices as a single unit since it was known in the art that electrical devices provide two switching devices into a single unit to reduce space and power requirements and since it has been

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held making integral a device that was previous separate is merely a matter of obvious engineering choice (In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bartelt et al. Bartelt discloses the claimed invention using a multiplexer control device, 38/27, to control the switches except for the switching devices being multiplexors. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the electrical device as taught by Bartelt, with the switching devices as multiplexors since it was known in the art that electrical devices use multiplexors as switching devices to provide a conventional and easily implemented way to switch a multiple signal input into one output line.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment. NOTE, the claims contain very broad limitations, such as "electrical current control circuit", "switching control devices", "multiplexing control devices", etc., that can be met by simple elements such as wires, buses, data latches, etc, since the function of those claim limitations have not been set forth in the claims. It is noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Evanisko whose telephone number is 571 272 4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571 272 4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

George R Evanisko  
Primary Examiner  
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